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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/580,119

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Sung Bac Lim

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MCKENNA LONG & ALDRIDGE LLP
1900 K STREET, NW
WASHINGTON, DC 20006

EXAMINER

PERRIN, JOSEPH L

ART UNIT

PAPER NUMBER

1792

MAIL DATE

DELIVERY MODE

02/04/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/580,119	Applicant(s) LIM, SUNG BAE	
	Examiner Joseph L. Perrin	Art Unit 1792	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 December 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 18-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 18-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 16 November 2009 has been entered.

Response to Arguments

2. Applicant's arguments filed 16 November 2009 (entered via the RCE filed 11 December 2009) have been fully considered but they are not persuasive.

3. Turning to the rejection(s) of the claims under 35 U.S.C. § 102, it is noted that the terminology in a pending application's claims is to be given its broadest reasonable interpretation (*In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989)) and limitations from a pending application's specification will not be read into the claims (*Sjolund v. Musland*, 847 F.2d 1573, 1581-82, 6 USPQ2d 2020, 2027 (Fed. Cir. 1988)). Anticipation under 35 U.S.C. § 102 is established only when a single prior art reference discloses, either expressly or under the principles of inherency, each and every element of a claimed invention. See *Constant v. Advanced Micro-Devices, Inc.*, 848 F.2d 1560, 1570, 7 USPQ2d 1057, 1064 (Fed. Cir.), cert. denied, 488 U.S. 892

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(1988); *RCA Corp. v. Applied Digital Data Sys., Inc.*, 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984). Moreover, anticipation by a prior art reference does not require either the inventive concept of the claimed subject matter or the recognition of properties that are inherently possessed by the prior art reference. *Verdegaal Brothers Inc. v. Union Oil co. of California*, 814 F.2d 628, 633, 2 USPQ2d 1051, 1054 (Fed. Cir. 1987), cert. denied, 484 U.S. 827 (1987). A prior art reference anticipates the subject matter of a claim when that reference discloses each and every element set forth in the claim (*In re Paulsen*, 30 F.3d 1475, 1478-79, 31 USPQ2d 1671, 1673 (Fed. Cir. 1994) and *In re Spada*, 911 F.2d 705, 708, 15 USPQ2d 1655, 1657 (Fed. Cir. 1990)); however, the law of anticipation does not require that the reference teach what Applicant is claiming, but only that the claims "read on" something disclosed in the reference. *Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984) (and overruled in part on another issue), *SRI Intel v. Matsushita Elec. Corp. Of Am.*, 775 F.2d 1107, 1118, 227 USPQ 577, 583 (Fed. Cir. 1985). Also, a reference anticipates a claim if it discloses the claimed invention such that a skilled artisan could take its teachings in combination with his own knowledge of the particular art and be in possession of the invention. See *In re Graves*, 69 F.3d 1147, 1152, 36 USPQ2d 1697, 1701 (Fed. Cir. 1995), cert. denied, 116 S.Ct. 1362 (1996), quoting from *In re LeGrice*, 301 F.2d 929, 936, 133 USPQ 365, 372 (CCPA 1962).

4. Regarding the 35 U.S.C. § 102 rejection over Milocco, Applicant argues the amended independent claims features of "a heater disposed in the heater receiving

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portion and located adjacent the pump case" (claim 18) and "a heater disposed in the sump housing and located adjacent the washing pump" (claim 25), alleging that the new limitation of one structure being "located adjacent" to another as imparting allowability. This is unconvincing as such recitation is significantly broad in scope and considered relative terminology. The term "adjacent" simply requires one structure to be not distant or nearby to the other and does not particularly point out and distinctly describe the location of the components, and given the fact that the components in a conventional dishwasher pump are inherently/implicitly proximate to each other and readily readable on being not distant, nearby or "adjacent" to each other, it is unclear how such recitation distinguishes over the teachings of Milocco much less *patentably* distinguish over Milocco. The pump components disclosed in Milocco are all adjacent to each other and fully read on the dishwasher configuration as claimed. However, even if one were to construe the components of Milocco as not being "adjacent" to each other, it is unclear how such modification serves to *patentably* distinguish because the fact remains that the components in the sump/pump case of Milocco are all proximate to each other, and providing such a minor modification such as rearranging the precise location of the components such that they are readable on being "adjacent" to each other does not appear to provide any unexpected or unpredictable result, and the components would still appear to produce the same predictable results (i.e. the designed function of each component). Thus, even if such recitation was not considered anticipated, there clearly exists a *prima facie* case of obviousness to rearrange the components such that they

read on being "adjacent" to one another. It is well settled that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

5. Regarding the remaining claim rejections, the Applicant relies on reasons of same indicated for independent claims 18 and 25 for patentability. This is not persuasive because claims 18 and 25 are rejected for reasons of record.

Claim Rejections - 35 USC §§ 102 and 103

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

7. Claims 18-21, 25 and 27-30 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Milocco.

8. Regarding claims 18 and 27-29, Milocco discloses a dishwasher comprising a tub (3) for receiving dishes, a sump housing which is coupled to a bottom of the tub (casing part 18 and filter 16 defining a housing around the bottom of the tub, cumulatively readable on a "sump"), the sump housing including a heater receiving portion including heater (11), upper (6) and lower (7) nozzles for spraying dishes, a washing pump (8) including a pump case in the sump housing (readable on being in the heater receiving portion since the sump housing receives a heater) and an impeller in the pump case (not shown; considered inherent/implicit as it is common knowledge that dishwasher pumps include impelling means), and a washing motor (17) mounted on an outer bottom portion of the sump housing wherein a shaft passes through (see entire document, particularly Fig. 1 and relative associated text). Regarding claims 19, 21 and

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30, the sump housing is shown with a groove portion in which the heater is received (see Figs. 1 and 2) and a hole in the sidewall which receive the heater (see heater (11) extending through the sump housing wall in Fig. 2). Regarding claims 20 and 25, the motor is mounted on the bottom of the tub which includes a bottom wall with curved recesses/grooves, thus forming a bottom surface across the bottom of the tub in which the motor shaft is mounted. Regarding claims 18 and 25, the newly added language of the heater being “located adjacent” to the pump case (claim 18) and the heater being “located adjacent” to the washing pump, the position is taken that Milocco reads on such broad and general configuration language given the fact that all components in the sump/pump configuration in Milocco are naturally adjacent to each other.

9. Even if, assuming *arguendo*, that the structures in Milocco do not read on being “adjacent” to one another, providing a minor modification such as rearranging the precise location of the components (all components already being proximate to one another) such that they are readable on being “adjacent” to each other does not appear to provide any unexpected or unpredictable result, and to components would still appear to produce the same predictable results (i.e. the designed function of each component, for instance, a heater to heat, a pump to pump, etc.). Thus, even if such recitation was not considered anticipated, there clearly exists a *prima facie* case of obviousness to rearrange the components such that they read on being “adjacent” to one another. It is well settled that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70. The Examiner notes that it is unclear how simply adding the

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configurational language “adjacent” serves to provide a patentably distinguishing feature, and nothing unexpected or unpredictable is readily apparent on this record.

10. Claims 22-24 and 31-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Milocco. Regarding claims 22 and 31, Milocco, *supra*, discloses the claimed invention including a plate provided at the end portion of the heater and attached to an inner surface of the sidewall which shields the heater insertion hole (not numbered, see Fig. 2 showing the plate structure). Manifestly, the heater of Milocco *necessarily must* include structure which seals the hole through which the heater coil passes in Fig. 2, otherwise the dishwasher would be incapable of holding water. Accordingly, Milocco inherently or at least implicitly discloses sealing means for sealing between the heater and the wall through which the heater passes through which is not numbered but clearly shown in Fig. 2. While Milocco discloses such structure on the inner surface of the sidewall, Milocco does not disclose a structure on both the inner surface of the sidewall and outer surface of the sidewall.

However, it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8; *In re Harza*, 274 F.2d 669, 124 USPQ 378 (CCPA 1960). Therefore, the position is taken that it would have been obvious to duplicate the inner seal/plate structure to cover seal/shield the heater on both sides of the sidewall to achieve the predictable result of forming a water tight seal in the heater receiving hole of the sump

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sidewall. Absent adequate evidence or showing of unexpected results or unpredictability, the claimed configuration is considered *prima facie* obvious.

Regarding claim 23 and 32, while the use of fastening means for fastening the plates to the sidewall are clearly required, i.e. inherent, Milocco does not expressly disclose what is used to fasten the plate. However, the position is taken that the use of common knowledge fastening means such as a bolt and nut would be well within the level and skill generally available to one having ordinary skill in the art as the use of such fastening means is old and well known and not considered a patentable modification.

Regarding claims 24 and 33, Milocco discloses the heater coil with bends but does not expressly disclose the claimed three bends in a “meandering shape”. It would have been an obvious matter of engineering choice to select a heating coil shape to satisfy the dimensions of the sump housing, since such a modification would have involved a mere change in the form or shape of a component. A change in form or shape is generally recognized as being within the level of ordinary skill in the art. *In re Dailey*, 149 USPQ 47 (CCPA 1976).

11. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Milocco in view of U.S. Patent No. 5,165,433 to Meyers. Milocco, *supra*, discloses the claimed invention including a washing machine motor wherein the shaft horizontally extends from the motor. Milocco does not disclose the motor shaft being vertical. However, Meyers teaches that it is known to mount a washing machine motor shaft vertically

extending between the motor and pump in a dishwasher sump housing (see, for instance, Fig. 3).

Thus, both motor/pump configurations are old and well known in the dishwashing art, and the substitution of one configuration for the other is *prima facie* obvious since the substitution would result in the same predictable result of providing a sump pump to a dishwasher. Moreover, it would have been obvious to one having ordinary skill in the art at the time the invention was made to rearrange the motor/pump configuration from a horizontal configuration to a vertical configuration, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

Conclusion

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph L. Perrin whose telephone number is (571)272-1305. The examiner can normally be reached on M-F 8:00-4:30.

13. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael E. Barr can be reached on (571)272-1414. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

14. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

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For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Joseph L. Perrin/
Joseph L. Perrin, Ph.D.
Primary Examiner
Art Unit 1792

JLP